

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

CIVIL ACTION NO.: 22-CV-00557

CARPENTIER CONSTRUCTION, LLC)

Plaintiff,)

v.)

SHAWN ALLYN &
EDWARD BORGATTI)

Defendants.)

**THIRD-PARTY COMPLAINT &
DEMAND FOR JURY TRIAL**

SHAWN ALLYN & EDWARD
BORGATTI,)

Third-Party Plaintiffs,)

v.)

MILLENNIUM ENGINEERING, INC.)

Third-Party Defendant.)

**AUTHORIZED BY COURT ORDER ON
MARCH 23, 2023 BY ECF NO. 37**

SHAWN ALLYN & EDWARD
BORGATTI,)

Third-Party Plaintiffs,)

v.)

82 ISLAND PATH ROAD, LLC. &
NORMAN CARPENTIER,)

Third-Party Defendants.)

PARTIES

1. Third-Party Plaintiff, Shawn Allyn, is a natural person with a principal place of residence at 110 Elizabeth Street, Feeding Hills, Massachusetts 01030.

2. Third-Party Plaintiff, Edward Borgatti, is a natural person with a principal place of residence at 110 Elizabeth Street, Feeding Hills, Massachusetts 01030.
3. Third-Party Plaintiffs have presented a claim within the meaning and interpretation of NH ST § 545-A: 1 III (claim means right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal or equitable).
4. Third-Party Defendant, 82 Island Path Road, LLC, is a New Hampshire Limited Liability Company located at 12B Campbell Drive, Hampton, New Hampshire. See Exhibit 1.
5. Third-Party Defendant, 82 Island Path Road, LLC has the exact same location and address as Plaintiff Carpentier Construction, LLC. See ECF Doc. 1-3, p. 19.
6. Third-Party Defendant, Norman Carpentier, has a principal place of address at 12B Campbell Drive, Hampton, New Hampshire.
7. Third-Party Defendant, Norman Carpentier, is the transferor of the subject property named herein.
8. Third-Party Defendant, Norman Carpentier, is an insider within the meaning and interpretation of NH ST § VII.
9. Third-Party Defendant, Norman Carpentier, is in one hundred percent (100%) control of the transferee of the subject property named herein.
10. Defendants are Debtors within the meaning and interpretation of NH SS § 545-A:1, VI.
11. At all relevant times hereto, Plaintiff, Carpentier Construction, LLC built, improved and rehabilitated the property known as 82 Island Path Road, Hampton, New Hampshire.

12. In September of 2021, the Demolition Permit was issued to Plaintiff, Carpentier Construction, LLC for the property known as 82 Island Path Road, Hampton, New Hampshire. See Exhibit 5.
13. In October of 2021, the Building Permit was issued to Plaintiff, Carpentier Construction, LLC for the property known as 82 Island Path Road, Hampton, New Hampshire to construct a new home. See Exhibit 5.
14. Plaintiff, Carpentier Construction, LLC represented to the Town of Hampton when it sought the building permit that it would expend \$327,000.00 in constructing the new dwelling. See Exhibit 5.
15. In October of 2022, Plaintiff, Carpentier Construction, LLC filed the civil action against the Defendants herein. See ECF Doc. No. 1, pg. 15, 17.
16. On October 7, 2022, Plaintiff, Carpentier Construction, LLC heating subcontractor completed an application with the Town of Hampton affirming and representing that Plaintiff, Carpentier Construction was the owner of 82 Island Path Road, Hampton, New Hampshire and was issued a permit to install a heating system for the Plaintiff. See Exhibit 6, p. 2.
17. At the time of transfer, upon information and belief, Plaintiff, Carpentier Construction, LLC held a substantial financial interest in 82 Island Path Road, Hampton, New Hampshire.
18. There was minimal to no consideration paid at the time of transfer from Third-Party Defendant, Norman Carpentier to Third-Party Defendant, 82 Island Path Road, LLC. See Exhibit 2, Deed transfer.

19. At the time Third-Party Defendant Norman Carpentier transferred the property for minimal consideration, it had an assessed value of \$537, 300. See Exhibit 4.
20. As of February 2023, after the transfer, Plaintiff Carpentier Construction, LLC represented and implied to this court that it was assetless and any attachment seeking to satisfy the creditors claims herein would be “futile.”

ALLEGATIONS

Count I: Violation of Fraudulent Transfer Act, N.H. Rev. Stat. Ch. 545A:7

21. Third-Party Defendant 82 Island Path Road, LLC is a New Hampshire Domestic Limited Liability Company which holds property located at 82 Island Path Road, Hampton, New Hampshire.
22. Upon information and belief, Plaintiff Carpentier Construction, LLC holds a substantial financial interest in 82 Island Path Road, LLC.
23. Third-Party Defendant Norman Carpentier represented to Third-Party Plaintiffs that he owned the property and his construction company, Plaintiff Carpentier Construction LLC was building the property for resale and profit.
24. During the course of the construction of Third-Party Plaintiffs’ home, Plaintiff, Carpentier Constructions LLC’s subcontractors would go back and forth from the project on 12 Chase Street, Hampton, New Hampshire to 82 Island Path Road, Hampton, New Hampshire.
25. Within fourteen (14) days of the Department of Environmental Services citing Plaintiff Carpentier Construction LLC for wetland violations at the Defendants’ home, Third-Party Defendant Norman Carpentier transferred the property 82 Island Path Road,

Hampton, New Hampshire into the newly formed 82 Island Path Road, LLC for no to minimal consideration. See Exhibit 2.

26. Third-Party Defendant Norman Carpentier in forming the new LLC held it out as doing business as Plaintiff Carpentier Construction, LLC and acted in conformity therewith.

27. Third-Party Defendant Norman Carpentier is the sole member of Plaintiff, Carpentier Construction, LLC. See Exhibit 3.

28. Third-Party Defendant Norman Carpentier is the sole member of Defendant, 82 Island Path Road, LLC. See Exhibit 1.

29. Third-Party Defendant Norman Carpentier directly controls, holds and owns the power to vote in both Corporations. See Exhibits 1, 3.

30. Third-Party Defendant Norman Carpentier is an insider with respect to both corporations as defined by NH ST, § 545-A:1 VII.

31. Third-Party Defendant, 82 Island Path Road, LLC, is a mere shell and is held out as Plaintiff, Carpentier Construction, LLC.

32. Third-Party Defendant, 82 Island Path Road, LLC, holds the same office and physical address as Plaintiff, Carpentier Construction, LLC. See Exhibit 1.

33. Third-Party Defendant, 82 Island Path Road, LLC, holds and uses the same exact phone number as Plaintiff, Carpentier Construction, LLC. See Exhibit 1, see also <https://www.carpentierconstruction.com/contact>.

34. Third-Party Defendant, 82 Island Path Road, LLC's purpose is listed new construction-builder. See Exhibit 1.

35. Third-Party Defendant, 82 Island Path Road, LLC, solely list Plaintiff, Carpentier Construction LLC's email as its address and contact for this LLC. See Exhibit 1.

36. The majority of materials used to build both 12 Chase Street, Hampton, New Hampshire and 82 Island Path Road, Hampton, New Hampshire came from Middleton Building Supplies under the account of Plaintiff, Carpentier Construction, LLC.
37. The sole beneficiary of Plaintiff, Carpentier Construction LLC and Third-Party Defendant 82 Island Path Road, LLC is Third-Party Defendant Norman Carpentier.
38. Plaintiff, Carpentier Construction LLC, continues to complete construction on the property today.
39. Plaintiff Carpentier Construction LLC abandoned the Defendants' project, refused to complete the project and failed to respond to request to fix material defects after transferring the asset to a newly formed LLC. See ECF Doc. 8.
40. On February 27, 2023, Plaintiff, Carpentier Construction, LLC filed a document in this court claiming it owned nothing in Rockingham County and that a pretrial attachment being sought by the Defendants herein would be "futile." See ECF Doc. 31, p. 6, ¶¶ 16-17.
41. At all relevant times hereto, Plaintiff, Carpentier Construction, LLC and its agents and officer directly knew that it owned a real interest and value in the asset at 82 Island Path Road, Hampton, New Hampshire.
42. At the time, Defendant Norman Carpentier transferred the property, he knew that an enforcement action would be brought against the Defendants for his failure to comply with the terms of the parties contract. See E.C.F. Doc. No. 8-1.
43. Third-Party Defendant, Norman Carpentier has attempted to hide the assets and interest held by Plaintiff, Carpentier Construction LLC, to the detriment of the creditors herein.

WHEREFORE, Defendants pray as follows:

1. Court finds for Third-Party Plaintiffs;
2. Issue an order whereby enjoining and preventing the further transfer of property known as 82 Island Path Road, Hampton, New Hampshire in accordance with N.H. Rev. Stat. § 545-A:7, I. (c)(1);
3. Issue order whereby allowing a pretrial attachment on the subject property to the benefit of Third-Party Plaintiffs; and
4. Court makes any other order it deems fair and just.

/s/ Shawn P. Allyn

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/s/ Edward P. Borgatti

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CERTIFICATE OF SERVICE

I, hereby certify that the foregoing Third Party Complaint will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants.

/s/ Shawn P. Allyn

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